

03-06-2002



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Docket No.:

WEL554/48000

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102003693

To the Honorable Commissioner of Patents and Trademarks: Please see the attached original documents or copy thereof.

1. Name of conveying party(ies):

MarketFare Foods, Inc.

- ☐ Individual(s)  
☐ General Partnership  
☒ Corporation-State Delaware  
☐ Other

Additional names(s) of conveying party(ies) ☐ Yes ☒ No

3. Nature of conveyance:

- ☐ Assignment  
☒ Security Agreement  
☐ Other
- ☐ Merger  
☐ Change of Name

Execution Date: January 31, 2002

2. Name and address of receiving party(ies):

Name: Wells Fargo Bank, N.A.

Internal Address: Nipul Patel, Mail Sort T5001-047

Street Address: 1000 Louisiana

City: Houston State: TX ZIP: 77002

- ☐ Individual(s) citizenship  
☒ Association National banking association

☐ General Partnership

☐ Limited Partnership

☐ Corporation-State

☐ Other

02-22-2002

U.S. Patent & TMO/TM Mail Rpt Dt. #01

If assignee is not domiciled in the designation is

☐ Yes ☒ N

(Designations must be a separate document from

Additional name(s) & address(es)

☐ Yes ☒ N

4. Application number(s) or registration numbers(s):

A. Trademark Application No.(s)

75/687241 75/716205 75/873803

B. Trademark Registration No.(s)

1,398,746 1,400,601

Additional numbers

☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Barry Bumgardner

Internal Address:

Street Address: Vinson & Elkins L.L.P., 2001 Ross

Suite 3700

City: Dallas State: TX ZIP: 75201

6. Total number of applications and registrations involved:.....

5

7. Total fee (37 CFR 3.41):.....\$ \$140.00

☐ Enclosed

☒ Authorized to be charged to deposit account

8. Deposit account number:

22-0365

03/05/2002 LMUELLER 00000232 75687241

DO NOT USE THIS SPACE

01 FC:481  
02 FC:482

40.00 DP  
100.00 DP

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Barry Bumgardner

Name of Person Signing

Signature

February 18, 2002

Date

19

Total number of pages including cover sheet, attachments, and

TRADEMARK

REEL: 002454 FRAME: 0253

## SECOND AMENDMENT TO DEBTOR SECURITY AGREEMENT

THIS SECOND AMENDMENT TO DEBTOR SECURITY AGREEMENT (this "Amendment"), dated as of January 31, 2002 is entered into by and among MARKETFARE FOODS, INC., a Delaware corporation (the "Debtor"), and WELLS FARGO BANK, N.A., as agent for each of the Lenders (as defined hereinafter) (together with its successors and assigns in such capacity, the "Administrative Lender").

### RECITALS

WHEREAS, the Debtor is a party to the Revolving Credit and Term Loan Agreement dated as of June 21, 1999, as amended by the First, Second and Third Amendments thereto, dated as of August 11, 1999, October 20, 1999 and July 26, 2000 respectively (collectively, the "Existing Credit Agreement"), among the several financial institutions from time to time party thereto (together with the Swap Providers, the Issuing Bank and the Swingline Lender (each as defined in the Existing Credit Agreement), the "Lenders"), and the Administrative Lender, as agent for the Lenders;

WHEREAS, concurrently and in connection with the Existing Credit Agreement, the Debtor executed a Security Agreement dated June 21, 1999, as amended by a First Amendment to Security Agreement dated August 4, 2000 (collectively, the "Debtor Security Agreement"), pursuant to which the Debtor granted a security interest in substantially all of the Debtor's assets to the Administrative Lender for its benefit and the benefit of the Lenders to secure the Debtor's obligations under the Existing Credit Agreement and the other Loan Documents; and

WHEREAS, the Debtor has defaulted under the Existing Credit Agreement and has requested that the Administrative Lender and the Lenders restructure Debtor's outstanding indebtedness owed to the Lenders. The Lenders are willing to restructure, modify and continue, but not extinguish, the indebtedness outstanding under the Existing Credit Agreement pursuant to the terms and conditions of that certain Amended and Restated Revolving Credit and Term Loan Agreement of even date herewith among Debtor, Landshire Sandwiches of Columbus, Inc., the Lenders and the Administrative Lender (as amended and in effect from time to time the "Credit Agreement").

WHEREAS, in accordance with the Credit Agreement the Debtor and the Administrative Lender now wish to amend the Debtor Security Agreement in certain respects, all as set forth in greater detail below;

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Defined Terms. Capitalized terms used herein and not otherwise defined shall have the meanings assigned in the Credit Agreement.
2. Amendments to Debtor Security Agreement.

(a) Effective as of the date hereof, each reference to the Existing Credit Agreement and the Debtor Security Agreement shall be deemed a referenced to the Credit Agreement, as the same may be amended, supplemented or modified from time to time.

(b) The Schedules to the Debtor Security Agreement are amended as set forth on Annex A attached hereto and made a part hereof.

3. Representations and Warranties. The Debtor hereby represents and warrants to the Administrative Lender and the Lenders as follows:

(a) The execution, delivery and performance by the Debtor of this Amendment have been duly authorized by all necessary corporate and other action and do not and will not require any registration with, consent or approval of, notice to or action by, any Person (including any Governmental Authority) in order to be effective and enforceable. The Debtor Security Agreement as amended by this Amendment constitutes a legal, valid and binding obligation of the Debtor, enforceable against the Debtor in accordance with its respective terms, without defense, counterclaim or offset,

(b) After giving effect to this Amendment, all representations and warranties of the Debtor contained in the Debtor Security Agreement are true and correct as though made on and as of the date hereof (except to the extent such representations and warranties specifically relate to an earlier date, in which case they were true and correct as of such earlier date).

(c) The Debtor is entering into this Amendment on the basis of its own investigation and for its own reasons, without reliance upon the Administrative Lender, the Lenders or any other person.

4. Miscellaneous.

(a) Except as herein expressly amended, all terms, covenants and provisions of the Debtor Security Agreement are and shall remain in full force and effect, and all references therein and in the other Loan Documents to the Debtor Security Agreement shall henceforth refer to the Debtor Security Agreement as amended by this Amendment. This Amendment shall be deemed incorporated into, and a part of, the Debtor Security Agreement.

(b) This Amendment shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective successors and assigns. No third party beneficiaries are intended in connection with this Amendment.

(c) This Amendment shall be governed by and construed in accordance with the law of the State of New York.

(d) This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, when taken together, shall be deemed to constitute but one and the same instrument.

(e) This Amendment, together with the Debtor Security Agreement, contains the entire and exclusive agreement of the parties hereto with reference to the matters discussed

herein and therein. This Amendment supersedes all prior drafts and communications with respect thereto.

(f) If any term or provision of this Amendment shall be deemed prohibited by or invalid under any applicable law, such provision shall be invalidated without affecting the remaining provisions of this Amendment or the Debtor Security Agreement, respectively.

(g) The Borrower hereby covenants to pay or to reimburse the Administrative Lender, upon demand, for all costs and expenses (including allocated costs of in-house counsel) incurred in connection with the development, preparation, negotiation, execution and delivery of this Amendment, consistent with the provisions of Section 11.4 of the Credit Agreement.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Amendment as of the date first above written.

**MARKETFARE FOODS, INC., the Debtor**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*Al Caporale*

*Al Caporale*

*PRESIDENT*

**WELLS FARGO BANK, N.A., as Administrative  
Lender**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Amendment as of the date first above written.

**MARKETFARE FOODS, INC.,** the Debtor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**WELLS FARGO BANK, N.A.,** as Administrative  
Lender

By:  \_\_\_\_\_  
Name: Nipul V. Patel  
Title: Vice President

# Security Agreement

## Schedule I - Location of Certain Collateral

MarketFare Foods, Inc.

a./B. Addresses of the properties at which Equipment and Inventory is located:

1. 811 Paloma Drive, Round Rock, Texas 78664
2. 2512 East Magnolia, Phoenix, Arizona 85034
3. 5850 West Amelia Earhart Drive, Salt Lake City, Utah 84116
4. 3637 Scarlet Oak Boulevard, St. Louis, Missouri 63122
5. U.S. 17, West of I-95, Falmouth, Virginia 22403

C. Location of all bank accounts of the Debtor:

- a. Bank of Boston, Boston, MA
- b. Zion's National Bank, Salt Lake, City, UT
- c. The National Bank of Fredericksburg, Fredericksburg, VA
- d. Compass Bank, Arizona, N.A., Phoenix, AZ
- e. Meramec Valley Bank, Valley Park, MO

D. Places of business of Debtor; places where receivables records are maintained:

- i. The Debtor's chief executive office is currently located at 811 Paloma Drive, Round Rock, Texas 78664.
- ii. Other addresses of the properties at which records are maintained:
  - (1) 2512 East Magnolia, Phoenix, Arizona 85034
  - (2) 5850 West Amelia Earhart Drive, Salt Lake City, Utah 84116

(3) 3637 Scarlet Oak Boulevard, St. Louis, Missouri 63122

(4) U.S. 17, West of I-95, Falmouth, Virginia 22403

E. Offices for Filing Financing Statements:

Secretary of State of the State of Texas

Secretary of State of the State of Delaware

Secretary of State of the State of Arizona

Office of the Utah Division of Corporations and Commercial Code of the State of Utah

Secretary of State of the State of Missouri

Office of the State Corporation Commission of the State of Virginia



Security Agreement

Schedule II - Patents and Licenses

MarketFare Foods, Inc.

None

# Security Agreement

## Schedule III – Trademarks and Licenses

MarketFare Foods, Inc.

### Item A. Trademarks

#### Registered Trademarks

<u>Country</u>	<u>Trademark</u>	<u>Registration No.</u>
United States	Aunt Bea's	1286250
United States	Avalanche	1398746
United States	Avalanche Dog Design	1400601
United States	Deli Pride and Design	1294751
United States	High Plains	2147807
United States	Italini	1394254
United States	Italini and Design	1394253
United States	Lady in Apron Design	1275428
United States	Old Santa Fe (Stylized)	1391003
United States	Pizza Grande	1422133
United States	Quick Eats	2162959
United States	Sandito	1246533
United States	Sausawrap	1936153
United States	Smiley Face Design	1308220
United States	Smileys	960064
United States	Smileys	961608
United States	Southern Acres	1528508
United States	Super Tato	1469228
United States	Takeouts Select	2179710
United States	Oven-In-A-Bag	2206240
United States	Round Street	2056322
United States	Smiley's All Stars	2220617
United States	Today's Market & Design	2080937
United States	Deli Fresh	2325758
Canada	Italini	386433
Canada	Smileys Sandwich and Design	197883
Mexico	MarketFare	642628

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Common Law Trademarks

<u>Country</u>	<u>Trademark</u>
United States	Crunch Mellow
United States	Sanditos-design
United States	Sonritos
United States	Build-a-Sandwich
United States	Colonial
United States	Design - Marshmallow Man
United States	Design - Rising Sun
United States	Pita the Great
United States	Taterlan Crispy Fries
United States	Design - Arrow (without Stylized Southland "S")
United States	All-Stars
United States	Breakfast-In-A-Minit
United States	Deli-In-A-Minit
United States	Lunch-In-A-Minit

Possible State Registrations

<u>Mark</u>	<u>States of Registration</u>
Deli Fresh****	Colorado, Idaho, Washington, Arizona
Deli Pride****	Nevada, Utah, Arizona, Colorado, Idaho, Montana, Oklahoma, Oregon, Washington, Alabama, Alaska, California, Florida, Georgia, Louisiana, Missouri, Mississippi, New Mexico, Texas, Virginia, West Virginia, Wyoming

Pending Trademark Applications

<u>Country</u>	<u>Trademark</u>	<u>Serial No.</u>
United States	Sonritos	75/639925
United States	Cool Hot Chocolate	75/687241
United States	MarketFare	75/716205
United States	Roundstreet	75/873803
Canada	MarketFare	1037506
Canada	Roundstreet	1062582
Mexico	Roundstreet	430915

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Item B. Trademark Licenses

<u>Trademark</u>	<u>Licensors</u>	<u>Licensee</u>	<u>Effective Date</u>	<u>Expiration Date</u>
Big Un	The Southland Corporation	Borrower	11/29/92	
Casa Buena	The Southland Corporation	Borrower	11/29/92	
Deli Shoppe	The Southland Corporation	Borrower	11/29/92	
Egg Hamlette	The Southland Corporation	Borrower	11/29/92	
Truck Stopper	The Southland Corporation	Borrower	11/29/92	
Slurpee	The Southland Corporation	Borrower	11/29/92	
Slurpee Light	The Southland Corporation	Borrower	11/29/92	
7-Eleven and Design	The Southland Corporation	Borrower	11/29/92	
Double Whammy	The Southland Corporation	Borrower	11/29/92	
Get Ilot	The Southland Corporation	Borrower	11/29/92	
Deli-Central	The Southland Corporation	Borrower	6/24/96	
Del Monte Del Monte and shield design	Del Monte Corporation	Borrower	2/10/99	2/9/02; Del Monte may terminate upon 1 year notice
Wild Blueberry Association of North America, Inc. licensing certification mark	Wild Blueberry Association of North America, Inc.	Borrower	4/30/98	
Chiquita name & logos	Chiquita Brands, Inc.	Borrower	5/1/98	6/30/00
Pace & Sunburst Design	Pace Foods, a division of Campbell Soup Co.	Borrower	8/6/97	8/5/99
Bull's Eye name and design	Kraft Foods, Inc.	Borrower (sales to Sam's Club)	undated	1 year; renewable annually; Kraft may terminate upon 90-days notice
Bull's Eye name and design	Kraft Foods, Inc.	Borrower (sales to Winn Dixie)	8/13/97	1 year; renewable annually; Kraft may terminate upon 60-days notice

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Sadler's Smokehouse and logo	Sadler's Smokehouse	Borrower	not dated	
Hormel Hormel and design	Hormel Foods, LLC	Borrower	5/19/99	5/18/00
Takeouts	Borrower	Hormel Foods Corporation	11/12/96	
All-Stars	Borrower	Kraft Foods, Inc.	4/16/98	4/15/08
Round Street	Borrower	Scott T. Motsinger	3/1/99	terminable upon 1 year notice
Avalanche	Borrower	Convenience Store Specialists, Inc.	1/23/97	1/2200; terminable upon 30-days notice
Avalanche	Borrower	Convenience Beverage Systems		
Avalanche	Borrower	Lebo Foods		
Borrower's trademarks	Borrower	The Southland Corporation		6/24/96

\*\*\*\* These registrations were in effect when McLane Foods, Inc. acquired the marks from Circle K. Borrower does not make any representation or warranty with respect to the status, validity or enforceability of these registrations.

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Schedule IV - Copyrights and Licenses

MarketFare Foods, Inc.

None

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TRADEMARK

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Schedule V - Trade Secrets and Know-How Licenses

MarketFare Foods, Inc.

Such Trade Secrets and Trade Secret licenses as are usual and customary for a company with businesses similar to Debtor.

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Schedule 3.1 - Corporate Reorganization Name Status

MarketFare Foods, Inc.

None

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Security Agreement

Schedule 3.3 - Equipment and Inventory Schedule

MarketFare Foods, Inc.

The following entities have possession of certain Equipment, which Equipment is not material:

Garb-Ko, Inc. - Equipment

Conoco, Inc. - Cheese/chili sauce peristaltic dispensers

Mison Inc. dba Royal Kunia 76 Circle K Express - Hatco Warmer

Loaf n' Jug/Mini Mart, Inc. - Hatco Warmer

Kwik Shop, Inc. - Hatco Warmer

Wilson Kauney - Wisco Warmer

The following entities have possession of Inventory:

1. McLane Mid-Atlantic  
56 McLane Drive  
Falmouth, VA 22403
2. Gateway  
Route 1, Quarry Road  
Warrenton, MO 63383
3. Henderson Cold Storage  
830 Horizon Drive  
Henderson, NV 89014
4. Mesa Cold Storage  
146 South County Club Drive  
Mesa, AZ 85210

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Schedule 3.5 - Intellectual Property Collateral

MarketFare Foods, Inc.

See Item B of Schedule III

1. The following may have the right to use the name "Avalanche" in its business: (a) Quigley's Family Creamery in Idaho Falls, Idaho, (b) Avalanche Enterprises of Colleyville, Texas, and (c) Science Foods, a subsidiary of Wider Nutrition International, Inc.
2. Swan Oil Company, Eat 'N Park Restaurants and Smiley's 4<sup>th</sup> St. Café may have the right to use the Smiley's trademark in connection with their business.
3. J&B Foods, Inc. has the right to use the Aunt Bea's trademark.
4. Others may have the right to use the Deli Fresh and Deli Pride trademarks and the trademarks identified in Schedule III as common law marks.
5. Opposition No. 120,333 filed by Mamacita, Inc. to Application Serial No. 75/639925 for SONRITOS was withdrawn. Mamacita, Inc. could take further action to enforce its rights in Registration No. 1559178 and other SONRISA marks.
6. Canada Registration No. 197880 for SMILEYS was canceled for non-use following a third party cancellation action. Rights in Canada Registration No. 197883 for the mark SMILEYS SANDWICH and Design may be affected by non-use or intervening third party rights.

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Security Agreement

Schedule 3.8 - Authorization and Approvals

MarketFare Foods, Inc.

None

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